

WHITE & CASE

LIMITED LIABILITY PARTNERSHIP

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JUL 14 1998

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July 13, 1998

Via Facsimile

The Honorable Lewis Hall Griffith
The Honorable Jeffrey S. Gulin
The Honorable Edward Dreyfus
c/o Gina Giuffreda
Copyright Arbitration Royalty Panel
Library of Congress
Room LM-403, James Madison Memorial Building
101 Independence Avenue, S.E.
Washington, D.C. 20540

Re: Noncommercial Educational Broadcasting
Compulsory License, Docket No. 96-6
CARP NCBRA

Dear Judges Griffith, Gulin and Dreyfus:

We write to call your attention to an unfair statement which appears in Mr. Weiss' letter to the Panel dated July 8, 1998. Therein, he states that Public Broadcasters filed separate submissions for terms of license agreements between Public Broadcasters and ASCAP and BMI, respectively, "because of ASCAP's refusal to agree to a three-party submission."

Having thus opened the door, it is only proper that the Panel know of ASCAP's good faith basis for believing that separate rates and terms should be promulgated for each of ASCAP and BMI, as we explained to Public Broadcasters' counsel.

First, nothing in the statute or regulations prohibits the Panel from establishing separate terms. If anything, Section 118 and agency precedent support the setting of individualized rates and terms for ASCAP. For example, in its 1978 decision, the CRT promulgated separate regulations for license terms between ASCAP and Public Broadcasters. 43 Fed. Reg. 25068, 25070 (June 8, 1978). Merely because Public Broadcasters now have agreed to identical regulations for license terms -- which relate essentially to how they will report on music use to each of ASCAP and BMI -- is really beside the point.

Moreover, for the last three license periods, ASCAP, BMI and Public Broadcasters have reached separate, voluntary license agreements. As such, there have been no published regulations for the terms or rates of license agreements for the period January 1, 1982 to date. Indeed, the Copyright Royalty Tribunal so noted in its December 29, 1987 Federal Register notice:

"The most commonly asked question of this agency is: How much does PBS and NPR pay ASCAP, BMI and SESAC? The answer is that the Tribunal has no regulations regarding such payments, because they are subject to voluntary license agreements."

1987 Adjustment of the Public Broadcasting Royalty Rates and Terms, Docket No. CRT 87-4 PBRA, 52 Fed. Reg. 49010, 49011 (December 19, 1987).

Throughout this proceeding, ASCAP has submitted evidence as to why and how it is different from BMI. ASCAP and BMI are competitors, their repertories are different, and each organization has a different way of measuring, valuing and compensating their members for public performances of copyrighted music. ASCAP and BMI have had different and distinct contractual histories with Public Broadcasters over the years. Each license negotiation, including the recent negotiations regarding license terms, has been conducted separately.

Finally, each of ASCAP's negotiations over the years with the representatives of other noncommercial broadcasters -- the American Council on Education, the National Federation of Community Broadcasters and the National Religious Broadcasters Music License Committee -- has been conducted separately. ASCAP, BMI and these groups presented separate proposals for license fee terms and regulations to the Copyright Office and before it, the Copyright Royalty Tribunal.

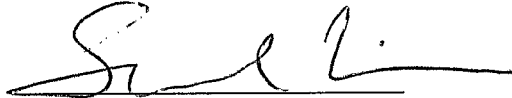
In the final analysis, it is Public Broadcasters which have failed to articulate any valid reason for promulgation of joint regulations for ASCAP and BMI, stating only their personal view that separate regulations are "unnecessary."

For the foregoing reasons, ASCAP urges the Panel to promulgate separate regulations for license terms for Public Broadcasters' use of music in the ASCAP repertory.

WHITE & CASE
LIMITED LIABILITY PARTNERSHIP

Judges Griffith, Gulin and Dreyfus
Page 3

Respectfully submitted,



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